IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

MONDAY, THE 12TH NOVEMBER 2007 / 21ST KARTHIKA 1929

SA.No. 924 of 1994()

AS.73/1991 of SUB COURT, KASARAGOD
OS.391/1978 of MUNSIFF COURT, KASARAGOD
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APPELLANTS:RESPONDENTS:DEFENDANTS:

***1. SMT. GULABI,**
AGED 45 YEARS,
W/O.AITHAPPA SAPALYA,
RESIDING IN KANVATHEERTHA OFKUNJATHUR VILLAGE,
KASARAGOD TALUK, P.O. KUNJATHUR. - RECORDED AS ONE OF THE LRS OF THE DECEASED RESPONDENT.

2. AITHAPPA SAPALYA,
AGED 52 YEARS,
S/O.SAPALYA, RESIDING IN KANVATHEERTHA OF KUNJATHUR VILLAGE, KASARAGOD TALUK,
P.O. KUNJATHUR.

BY ADV. SRI.N.L.KRISHNAMOORTHY
SRI.LAKSHMI NARAYANAN

RESPONDENT:APPELLANT:PLAINTIFF:

NARAYANA SAPALYA, AGED 58 YEARS,
S/O.SOMASAPALYA, RESIDING OF KANVATHEERTHA OF KUNJATHUR VILLAGE, KASARAGOD TALUK,
P.O. KUNJATHUR. - SINCE DIED – LRS IMPLEADED:

***ADDL.R2 TO R6:**

R2. SUNDARA, S/O.LATE GOURI, OPPOSITE SRI. RAMA BHAJANA MANDIRA, SOMESHWAR VILLAGE, P.O. KOTEKAR-575 022, MANGALORE TALUK.

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R3. RAMACHANDRA, S/O.LATE GOURI,
OPPOSITE SRI. RAMA BHAJANA,
MANDIRA, SOMESHWAR VILLAGE,
P.O. KOTEKAR – 575 022, MANGALORE TALUK.

R4. RAMESHA, S/O.LATE GOURI,
KANWATHERRTA HOUSE, P.O. KUNJATHUR = 671 323,
VIA. MANJESHWAR, KASARAGOD DISTRICT.

R5. RADHA, D/O.LATE GOURI, BENGARE KANWATHEERTHA,
P.O. KUNJATHUR – 671 323, VIA.MANJESHWAR,
KASARAGOD TALUK.

R6. BHAVANI, D/O.LATE GOURI,
MANIMAJALU HOUSE, P.O.NARIKOMBU – 574 231,
VIA. PANE MANGALORE, BANTWAL TALUK.

*ADDL.RESPONDENTS 2 TO 6 ARE IMPLEADED AND THE 1ST PETITIONER IS RECORDED AS ONE OF THE LRS OF THE DECEASED 1ST RESPONDENT AS PER ORDER DTD. 11/12/06 IN I.A.NO.698/05.

BY ADV. SRI.M.C.SEN (SR.))
SRI.JAYAPRAKASH SEN) for R1

SRI.M.P.SREEKRISHNAN)
SMT.SHAHNA KARTHIKEYAN) for Addl.R2 toR6

THIS SECOND APPEAL HAVING BEEN FINALLY HEARD ON 12/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

M.SASIDHARAN NAMBIAR,J.

S.A.NO.924 OF 1994

Dated 12th November 2007

J U D G M E N T

Defendants in O.S.391/1978 before Munsiff court, Kasargod are the appellants. Plaintiff in the suit was the respondent. On the death of sole respondent, additional respondents 2 to 7 were impleaded and first appellant was also recorded as his legal heir. Deceased first respondent instituted the suit seeking a decree for recovery of possession of plaint schedule shop room. Appellants resisted the suit claiming kudikidappu right. Question of kudikidappu was referred to Land Tribunal. Land Tribunal found that first appellant is a kudikidappukari. Trial court accepting that finding dismissed the suit. It was challenged before Sub court, Kasargod in A.S.73/1991. Learned Sub Judge set aside the finding of Land Tribunal and held that first appellant is not kudikidappukari. That finding was arrived at holding that earlier O.A filed by first appellant was dismissed. Decree for recovery of

possession was granted. It is challenged in the appeal. Appeal was admitted formulating following substantial question of law.

> After the sole respondent died and additional respondents were impleaded and first appellant was recorded as one of the legal heirs of deceased first respondent along with respondents 2 to 6 appeal memorandum was amended seeking to raise additional substantial question of law that in view of the death of first respondent and first appellant also being one of the legal heirs decree for recovery of possession is not sustainable.

2. Learned counsel appearing for appellants and additional respondents were heard.

3. It was pointed out by the learned counsel appearing for appellants that on the death of first respondent/plaintiff his rights devolved on the first appellant also along with respondents 2 to 6 and respondents 2 to 6 are not entitled to a decree for recovery of possession as against first appellant the co-owner and hence the decree is not sustainable. Learned Senior counsel appearing for respondents also submitted that on the death of second respondent, first appellant is also one of the legal heirs and due to the subsequent

event the decree is unenforceable and a suit for recovery of possession against one of the co-owners is not maintainable and therefore appeal may be disposed reserving the right of respondents 2 to 6 to seek appropriate remedy. In view of the subsequent events and the submission appeal is allowed. Decree and judgment passed by first appellate court are set aside. O.S.391/1978 on the file of Munsiff court, Kasargod stands dismissed with liberty to respondents 2 to 6 to seek appropriate remedy in accordance with law.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.

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M.SASIDHARAN NAMBIAR,J.

JUDGMENT

S.A.NO.924 OF 1994

12th November 2007

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